IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.6624 of 2007

Shri Ghule Sudhakar Udahav — Petitioner

Vs.

The State of Maharashtra & ors. — Respondents

Mr.A.M.Joshi for petitioner.

Ms.S.S.Bhendye, AGP for Resp.nos.1 & 2.

Mr.V.S.Deokar for Resp.nos.3 & 4.

CORAM: B.H.MARLAPALLE, J.

December 6, 2007.

P.C.

. Heard Mr.Joshi, the learned counsel for the petitioner.

. Rule. Respondents waive service.

. The petition is taken up for final hearing forthwith as by the impugned order dated 7/7/2007 the School Tribunal has dismissed the application for

condonation of delay caused in filing an appeal under Section 9 of the MEPS Act, 1977.

. As per the petitioner he possesses the qualifications of B.A., B.P.Ed. and on 12/5/1996 he came to be appointed as Assistant Teacher by the respondent no.3 and worked at the respondent no.4 - school as such till 16/6/2005 and thereafter he was orally stopped from signing the must roll and thus there was otherwise termination of service. He made representations to the respondents from time to time but in vain and, therefore, on 1st March 2006 he approached the School Tribunal. The respondent nos.3 and 4 claimed that the appeal was filed beyond time by nine months and twenty four days and there was no proper explanation. The School Tribunal accepted the plea of the management and held that the appellant failed to explain the delay in filing the appeal satisfactorily and, therefore, the delay condonation application was rejected.

. As per the School Tribunal itself the muster roll at Exhibit 4/3 indicated that the appellant had signed it on 15/6/2005, the documents at Exhibits 4/4 and 4/6 indicated that the appellant had submitted a

complaint that the muster roll was not made available. The documents at Exhibits 4/7 to 4/10 indicated his approach to the respondents from time to time for his reinstatement in service. The last letter at Exhibit 4/10 was addressed to the Education Officer and was dated 10/1/2006. As per the School Tribunal the appellant was required to explain the delay caused from 10/1/2006 to 1/3/2006 and the said explanation was unsatisfactory or there was no explanation.

. This view taken by the Tribunal is hyper technical. The appellant had put in about nine years of service and whatever may be the justification in the action of the management in discontinuing him, his appeal deserved to be decided on merits rather than being thrown out on the point of delay. The Tribunal itself found that till 10/1/2006 the delay was properly explained and the further delay of less than two months even though was not explained, could not by itself be a reason to unsuit the teacher who had approached the School Tribunal with a grievance that he was illegally sought to be removed from service by oral orders. The appeal filed by the teacher deserves to be heard and decided on merits

and the impugned order has resulted in miscarriage of justice. Mr.Deokar, the learned counsel for the respondent nos.3 and 4 submitted that the appellant was not qualified to be appointed as an Assistant Teacher in a primary school as he did not possess the D.Ed. qualifications, he was employed at some other hostel and his subsequent actions lack bona fides. He also submitted that the appellant was discontinued on closing of the academic year 2004-05 and he had unauthorisedly signed the must roll in June 2005. Undoubtedly these are the issues which will have to be gone into by the School Tribunal while deciding the appeal on merits and these allegations by themselves would not justify the rejection of application for condonation of delay.

. Hence the petition succeeds and the same is hereby allowed. The impugned order is quashed and set aside and the application for condonation of delay i.e. Misc. Application No.1 of 2006 before the School Tribunal at Kolhapur stands allowed. The petitioner shall take appropriate steps to implead the teacher appointed in his place i.e. Ms.S.S.Shinde as additional respondent. The appeal shall be registered and it shall be heard and decided

on its own merits as expeditiously as possible and preferably within a period of six months from the receipt of writ from this Court. Parties to appear before the School Tribunal on 17th December 2007.

(B.H.MARL